

Preventing Estate Planning Pitfalls

Advanced Estate Planning Tips



Estate planning is a standard part of any savvy wealth management strategy. If you've already initiated this process, you've crafted basic trust documents, designated beneficiaries and assigned a power of attorney. The best laid plans, however, can be disrupted by fine print and simple oversights. David Work, Managing Director of Hightower Advisors' Estate and Financial Planning Group, offers tips to empower you to dig deeper into your estate plan to ensure that it is aligned with your intentions.

TIPS TO PREVENT ESTATE PLANNING PITFALLS

01 | Revisit the written language that dictates the structure of your estate plan.

While it's no revelation that the language in any legally binding document is critical, simple semantics are often the leading culprit in undermining a solid estate plan. As Work cautions, "Any ambiguity is where there's the biggest potential for 'gotchas'." He advises that authors of trust documents carefully consider the impact of seemingly small words such as "shall" and "may." "Shall," for example, requires the trustee to execute upon an instruction, while "may" provides the trustee with flexibility to assess whether an instruction is in the best interest of the estate. Similarly, using the wrong pronouns to refer to an individual can create confusion that unintentionally leads to improper implementation of the trust.

Tip: Review your estate plan carefully, checking for errors, misprints and oversights.

02 | Limit your will to clear, legally binding guidelines.

Your will should be limited to clear cut guidelines that the trustee must act upon. Anything intangible can be difficult to interpret and may lead to misinterpretations and, ultimately, legal action. "The hopes, dreams and legacy that you hope to pass on is important," says Work, "but, those subjective goals should be communicated through an Ethical Will or a letter of wishes, which are separate, non-legally binding documents that provide the beneficiary and the trustee with context for how the money is intended to be used."

Tip: Create an ancillary document that communicates the personal goals you hope to achieve through your estate plan.

03 | Avoid specific amounts when naming bequests.

A specific bequest is a gift of a particular dollar amount or piece of property.¹ When a will is administered, it pays outstanding debt and administration costs (healthcare expenses, cost of probate, etc.), any state and federal estate taxes due, specific bequests and, finally, the remaining assets, known as the “residuary estate” to beneficiaries of the estate in accordance with the provisions of the will. This means that once fees and specific bequests are paid, the remaining amount of your estate may be less than originally anticipated, and your surviving heirs may receive a fraction of their intended inheritance.

Tip: Prioritize legacy funding by assigning percentages to bequests instead of specific dollar amounts to ensure that those funds are dispersed proportionately to the size of your remaining estate.

04 | Identify alternatives to age attainment clauses.

Oftentimes, trusts are set up to distribute assets to beneficiaries based on age-related milestones. In these scenarios, there is typically a designated date upon which the trust terminates and beneficiaries gain access to the remaining assets in the trust, essentially removing any guardrails around those funds. Work explains the downside of this strategy, “When the inheritance is no longer protected by the trust, those assets will be exposed to liabilities such as improper usage by the beneficiary and personal lawsuits.” Ideally, the clauses that support these strategies balance structure and flexibility with protection.

Tip: Maintain inheritances in trust over the beneficiary’s lifetime pending extenuating circumstances. Consider allowing the beneficiary to serve as trustee or co-trustee upon attaining a certain age and include language creating flexibility over how the trust assets are ultimately distributed.

05 | Select the right fiduciary.

Selecting the right fiduciary to carry out the terms of your will or trust is essential to the successful implementation of your plan. This role can be assigned to a family member, another individual or a corporate entity like a bank or trust company with the experience and resources to interpret and carry out the provisions in your will or trust. Exercising discretion over distributions can be difficult when problematic family dynamics are involved. Trusts require detailed recordkeeping and tax reporting. These duties must be fulfilled for the duration of the trust or you risk not accomplishing the trust’s initial purpose.

Tip: Consult with your advisor to analyze the pros and cons of each type of fiduciary to better assess who is the right person or entity to execute your plan.

06 | Provide flexibility around the designated trustee.

Removal and appointment language should be standard in any trust document, according to Work. This enables the beneficiary to change the designated trustee if it is deemed that the relationship is no longer in the best interests of the trust. If this language is not present, the trustee can use the trust assets to defend their position as trustee in a lawsuit. The terms can dictate that the existing trustee is given 30 days of termination notice (without cause) and help ensure the appropriate selection of the succeeding trustee with specific parameters to ensure a reputable choice, i.e., AUM requirements, disinterested party, size of firm, etc.

Tip: Confirm that your trust document includes removal and appointment language.

07 | Consider the tax implications of designating powers of appointment.

Designating a power of appointment could be a useful strategy to provide beneficiaries with the discretion to distribute the assets of your trust. There are two options, but beware, as there may be associated tax implications:

1. General power of appointment: There are no limits to how the beneficiary can direct the assets of an estate plan. In this case, it's important to note that trust assets will be included in the beneficiary's estate and subject to tax, which may undermine the tax-exempt status of their trust.
2. Limited/special power of appointment: The beneficiary can redirect funds in the estate plan to a specified group in certain circumstances.

Tip: Consider how tax implications may impact the goals of your estate plan when designating powers of appointment.

08 | Regularly reevaluate the titling of assets.

Your estate plan should be reassessed on a regular basis—at minimum, as part of your annual review. Any assets that are accumulated after your estate plan is drafted should be retitled into your revocable trust to avoid a potentially complicated and expensive probate process. Properties that are not transferred into the trust may be subject to probate upon your passing. And if you own property in a state other than your state of residence, your estate administrator will have to go through an ancillary probate process, resulting in additional expenses and potentially extending the time it takes to transfer assets to your heirs.

Tip: Review your estate plan regularly, including the titling and ownership of assets to minimize estate administration expenses.

Every estate plan is distinct, yet they all share one common goal: to successfully distribute assets in alignment with an individual's intentions upon their death. Another certainty is that the individual behind those documents will not be present to ensure proper implementation. Therefore, it's essential to firm up each detail now. As Work says, "Even though many clients don't want to control from the grave, most clients we work with want their assets to be distributed efficiently, with the least amount of taxes, and in a manner that protects those assets for as long as possible. That's just part of being a responsible steward of your legacy."

Hightower Advisors' Estate and Financial Planning Group helps craft plans that carefully consider all of the critical details from the proper selection of fiduciaries to the effective implementation of trusts.



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